



MISSOURI DEPARTMENT OF MENTAL HEALTH



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

Dorn Schuffman, Department Director

CHAPTER Human Resources	SUBCHAPTER Personnel Administration	EFFECTIVE DATE 5/1/03	NUMBER OF PAGES 5	PAGE NUMBER 1 of 5
SUBJECT Family Medical Leave		AUTHORITY Section 630.050, RSMo	HISTORY See Below	
PERSON RESPONSIBLE Deputy Director, Human Resources			SUNSET DATE 7/1/06	

PURPOSE: To define the Department's policy with regard to family and medical leave.

APPLICATION: Applies to the entire department.

(1) The Family and Medical Leave Act (FMLA) of 1993 grants eligible employees up to twelve (12) weeks of job protected leave per year because of the birth and/or care of the newborn child of the employee, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (spouse, parent, or child) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of his or her job.

(2) DEFINITIONS -- As used in this DOR, the following terms shall mean:

(A) "Eligible employee," an employee who has been employed by the same employer for at least one (1) year, and has at least 1,250 actual hours worked during the preceding twelve (12) month period. (The state of Missouri is considered to be one employer.) Military leave shall count as hours worked;

(B) "Spouse," a husband or wife recognized under law;

(C) "Parent," a biological parent or an individual who stood *in loco parentis* to an employee when the employee was a child as defined below. This term does not include parents-in-law;

(D) "Child," a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person who is standing *in loco parentis*, who is either under age eighteen (18), or eighteen (18) or older and incapable of self-care because of a mental or physical disability;

(E) "*In loco parentis*," persons who stand *in loco parentis* include those with day-to-day responsibilities to care for and financially support a child;

(F) "Serious health condition," an illness, injury, impairment, or physical or mental condition that involves -

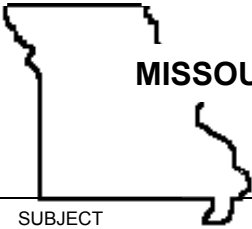
1. inpatient care and any period of incapacity or treatment in connection with or consequent to inpatient care;

2. any period of incapacity requiring absence from work for more than three (3) calendar days AND that involves continuing treatment by a health care provider; or

3. continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three (3) calendar days; or

4. prenatal care by a health care provider;

(G) "Continuing treatment,"



MISSOURI DEPARTMENT OF MENTAL HEALTH



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

Dorn Schuffman, Department Director

SUBJECT	EFFECTIVE DATE	NUMBER OF PAGES	PAGE NUMBER
Family Medical Leave	5/1/03	5	2 of 5

1. Treatment two or more times (for the same condition) by a health care provider. Does not include routine physical, eye or dental examinations;

2. A single visit to a health care provider that results in a regimen of continuing treatment, or;

3. In the case of a serious, long-term or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider. Examples include Alzheimer's, strokes, and terminal cancer;

(H) "Week," for a full-time employee, a week is considered to be forty (40) hours. For a part-time employee, a week is considered to be the amount of hours normally worked during a week (e.g.: 32 hours is considered a week for an 80% employee). The twelve (12) week period can be figured in hours for the purposes of intermittent leave (see below); and

(I) "Year," for the purposes of FMLA, the Department defines a year as the current month and preceding eleven (11) months.

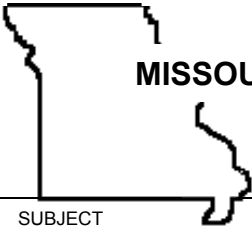
(3) USE OF LEAVE DURING FAMILY AND MEDICAL LEAVE

(A) During a period of family and medical leave, the employee will use accumulated sick, annual, state compensatory time and holiday leave in accordance with facility policy until the leave balance is exhausted; except in the case of workers compensation which may be taken as leave without pay and still covered under the FMLA and except in the case of maternity or paternity leave which will be set out in (B) and (C). After those leave balances are exhausted, the employee will be placed on leave without pay. Any federal compensatory time taken will not be considered part of FMLA.

(B) Depending upon accumulated sick leave balances, up to six (6) weeks of sick leave shall be granted to a mother immediately after the birth of a child. If there is a medical need for the mother to be absent for a longer period it shall be documented by appropriate medical statements. If the mother desires more than six (6) weeks absence and there is no documented medical reason, the balance of the twelve (12) weeks allowed will be charged against annual, state compensatory time or holiday leave, and leave without pay after those leave balances are exhausted. Leave for birth and care of child must conclude within twelve (12) months of the birth. Use of intermittent leave is subject to the employer's approval.

(C) Depending upon accumulated sick leave balances, up to one (1) continuous week of sick leave shall be granted to a father immediately after the birth of a child. If there is a medical need to care for the mother or child for a longer period of time it shall be documented by appropriate medical statements. If the father desires more than a one (1) week absence and there is no documented medical reason, the balance of the leave will be charged against annual, state compensatory time or holiday leave, and leave without pay after these balances are exhausted. Use of intermittent leave is subject to the employer's approval.

(D) In the case of adoption or foster care (as defined in section 825.112 of the FMLA Final Rules and Regulations) up to twelve (12) weeks of annual, state compensatory time, holiday or unpaid leave shall be granted to the employee. Annual, state compensatory time and holiday leave must be exhausted prior to the use of leave without pay. When medical necessity is certified by a health care provider, the



MISSOURI DEPARTMENT OF MENTAL HEALTH

Dorn Schuffman, Department Director



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

SUBJECT	EFFECTIVE DATE	NUMBER OF PAGES	PAGE NUMBER
Family Medical Leave	5/1/03	5	3 of 5

employee may use sick leave. FMLA leave will also be granted prior to the actual placement or adoption of a child if an absence from work is required in order for the placement for adoption or foster care to proceed.

(E) In the event that both the husband and wife are employees of the State of Missouri, leave for the birth or adoption of a child shall be limited to a period of twelve (12) weeks between the two parents/employees.

(4) NOTICE REQUIREMENT

(A) Leave that meets the qualifying conditions can either be designated by the employer or requested by the employee and in either case the facility must notify the employee within two (2) working days (of acquiring knowledge of the condition) that the leave has been designated FMLA.

(B) An employee is required to give thirty (30) days notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form should be completed by the employee and returned to the appropriate person designated by the facility.

(C) In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a completed "Request for Family/Medical Leave" form.

(D) If an employee fails to give thirty (30) days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until thirty (30) days after the employee provides notice.

(5) APPLYING FOR AND SCHEDULING LEAVE

(A) In all circumstances, the employee must follow local facility policies and procedures for notifying supervisory staff of expected or unexpected absences.

(B) An employee requesting family and medical leave must complete the appropriate facility documents and return them to the appropriate person designated by the facility. The documents must state the reason for the leave, the duration of the leave, and the starting and ending dates of the leave.

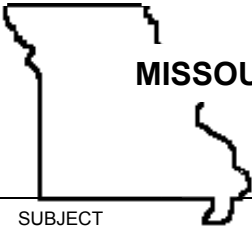
(C) The facility will designate leave as family and medical leave if the reasons for leave are such that they would be covered by the Family and Medical Leave Act. The facility must notify the employee that the leave is considered family and medical leave within two (2) business days after the facility learns of the nature of such leave.

(D) Leave taken under the Family and Medical Leave Act shall begin with the first designated absence.

(E) An employee may take family and medical leave when medically necessary in separate blocks of time due to a single illness or injury. An employee may also work a reduced schedule (e.g., from full-time to part-time) when the employee and the facility agree to such an arrangement. Intermittent leave or leave taken due to a reduced schedule will only reduce the total amount of family and medical leave by that amount actually taken. At the facility's discretion, an employee may be required to transfer to another position to better accommodate an intermittent leave schedule.

(6) MEDICAL CERTIFICATION OF LEAVE

(A) An application for leave based on the serious health condition of the employee or the spouse, child, or parent must be supported by a statement completed by the



MISSOURI DEPARTMENT OF MENTAL HEALTH



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

Dorn Schuffman, Department Director

SUBJECT	EFFECTIVE DATE	NUMBER OF PAGES	PAGE NUMBER
Family Medical Leave	5/1/03	5	4 of 5

applicable health care provider. Medical certification must be provided by the employee on the appropriate form provided by the facility within fifteen (15) days after requested, or as soon as is reasonably possible.

(B) The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the employee is needed to care for a spouse, child, or parent, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his or her job.

(C) The facility may require a second opinion by a health care provider. If the second opinion conflicts with the first, the facility may require a third opinion. The provider of the third opinion must be jointly designated or approved by both the facility and the employee. The third opinion will be final. The second and third opinions will be paid by the facility.

(D) The facility may require re-certification of necessity for leave no less than thirty (30) days from the previous medical certification.

(7) BENEFITS COVERAGE DURING LEAVE

(A) During a period of family and medical leave, the employee will be retained in the Missouri Consolidated Health Care Plan under the same conditions that applied before leave commenced. If the employee enters into a leave of absence without pay, the employee must continue to make any contributions that he or she made to the plan before taking leave to continue health coverage (e.g.: health insurance for family). Employee contribution amounts are subject to any change in rates that occur while the employee is on leave. Failure of the employee to pay his or her share of the health insurance premium will result in a loss of coverage.

(B) The employee is not entitled to benefit accrual during periods of unpaid leave but will not lose anything accrued prior to leave.

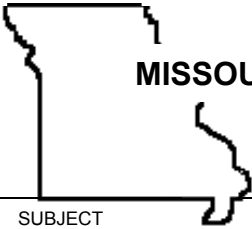
(8) RETURN FROM LEAVE

(A) Before the employee returns to work from family and medical leave for their own serious health condition, the facility will require the employee to submit a medical certification from a health care provider that releases the employee to return to work.

(B) Employees returning from family and medical leave will be returned to the same or equivalent position. An equivalent position is defined as the same job title with the same pay, the same or similar work duties, the same work location, and the same shift and days off.

(C) If an employee with a qualifying serious health condition chooses to accept a temporary modified duty assignment the employee's right to restoration is available until twelve (12) weeks have passed within the twelve (12) month period, including FMLA taken and the period of temporary modified duty. All family medical leave taken and the period of temporary modified duty shall count toward the right to restoration. The time spent on light duty does NOT count against the four hundred and eighty (480) hours of FMLA entitlement.

(D) In the event of any activity affecting all employees or employees in the same class as the employee on family and medical leave (such as cost of living increase or



MISSOURI DEPARTMENT OF MENTAL HEALTH



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

Dorn Schuffman, Department Director

SUBJECT	EFFECTIVE DATE	NUMBER OF PAGES	PAGE NUMBER
Family Medical Leave	5/1/03	5	5 of 5

layoff), the employee will return to work with such benefits or in a position consistent with the result as if the employee had been on duty at that time.

(9) FAILURE TO RETURN FROM LEAVE

(A) If the employee is unable to return from family and medical leave the employee may request further use of sick or other paid leave or a leave of absence without pay. Such leave requests must be made prior to the expiration of the employee's approved family and medical leave, and in accordance with facility policy. The appointing authority will determine if further leave beyond the twelve weeks family and medical leave will be granted. The failure of an employee to return to work upon the expiration of family and medical leave without authorization as described above will be considered unauthorized absence and may result in disciplinary action up to and including dismissal.

(B) If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the state for payment of health insurance premiums during any unpaid family and medical leave, unless the reason the employee fails to return is:

1. the presence of a serious health condition which prevents the employee from performing his or her job, or
2. due to circumstances beyond the employee's control. Certification is required within thirty (30) days of failure to return for either reason listed above.

(10) Failure to comply or assure compliance with the provisions of the Department Operating Regulation may be cause for disciplinary action up to and including dismissal.

(11) On a continuing basis the Office of Human Resources will monitor court cases at the Supreme Court level to determine if changes to the DOR are needed. As needed those changes will be made to maintain compliance with the federal regulation and official interpretations of that regulation. A report identifying such changes will be submitted to the Deputy Director, Office of Quality Management.

History: Original DOR effective April 1, 1998. Amendment effective July 1, 2002. Amendment effective May 1, 2003.